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Paper No. 5

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OFFICE OF PETITIONS

In re Application of

Dinh et al.

Application No. 10/061,458

Filed: February 1, 2002

Attorney Docket No. S63.2-10389

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This is in response to the petition filed October 21, 2002 under 37 CFR. §1.47(a).

The petition under 37 CFR. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on February 1, 2002, without an executed oath or declaration. Accordingly, on April 10, 2002, applicant was mailed a "Notice to File Missing Parts of Reissue Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of June 10, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a four (4) month extension of time was also submitted. In support of the petition, applicants submitted a declaration of facts.

A grantable petition under 37 CFR. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116 and 37 CFR 1.175; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirement (1).

As to item (1), rule 47 applicant has failed to show that inventors Phan, Eury and Dinh were ever presented with a copy of the reissue application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of reissue application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). The statement of facts

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indicates only a letter and declaration were sent to inventors Phan, Eury and Dinh. Inventors Phan, Eury and Dinh must be presented with the opportunity to sign the reissue application papers before rule 47 status will be granted.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.



Charlema R. Grant
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Office of Petitions

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